*THE HON'BLE SRI JUSTICE G. BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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+WRIT PETITION Nos.24404 & 24979 OF 2002

%Dated 11-03-2005

Union of India, Rep., by its Joint Director ….. Petitioners

& another. in WP.24404/02

Shaik Mahaboob Saheb, S/o. Imam Saheb ….. Petitioner in

WP.24979/02

VERSUS

$ Shaik Mahaboob Saheb, S/o. Imam Saheb ….. Respondents

& another. in WP.24404/02

The Divisional Railway Manager, ….. Respondents in

South Central Railway, Vijayawada & others. WP.24979/02

! Counsel for the Petitioners (in WP.24404/02):MR.R.S.MURTHY.

^Counsel for Respondents (in WP.24404/02): MR.HANUMANTHA REDDY.

! Counsel for the Petitioner (in WP.24979/02):MR.HANUMANTHA REDDY.

^Counsel for Respondents (in WP.24979/02): MR.R.S.MURTHY.

<GIST:

> HEAD NOTE:

? Cases referred

1. 2005 (1) SUPREME 995

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NOs : 24404 and 24979 of 2002

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Writ Petition No.24404 of 2002

Between:

1 Union of India, Rep. by Joint Director,
Establishment (D&A), Rail Bhavan Railway Board, New Delhi
2 Divisional Railway Manager South Central Railway, Vijayawada .

..... PETITIONERS

AND

1 Shaik Mahaboob Sahab S/o.Imam Sahab
C/o.Shaik Khader Basha Q.No.42-B, Railway Quarters
Opp: Railway Hospital, Gudur Nellore District
2 Deputy Secretary Union Public Service Commission,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ, order or direction to quash the order in OA.No.387 of 2002 Dt.04/10/2002 of Central Administrative Tribunal of Hyderabad Bench.

Counsel for the Petitioners: MR.R.S.MURTHY

Counsel for the Respondents: MR.A.HANUMANTHA REDDY

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WRIT PETITION No: 24979 of 2002

Between:

Shaik Mahaboob Saheb, S/o.Imam Saheb
R/o.C/o.Shaik Khader Basha Q.No.42-B, Railway Quarters
Opp. Railway Hospital, Gudur, Nellore District

..... PETITIONER

AND

1 The Divisional Railway Manager South Central Railway, Vijayawada.
2 The Deputy Secretary Union Public Service Commission, New Delhi.
3 Joint Director, Establishment D&A, Railway Board,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction particularly one in the nature of writ of certiorari quashing the proceedings Dt.31/12/2001 in third respondent's reference No.E(D&A)99AE8-6(PT) withholding the monthly pension of the petitioner on permanent basis as modified by the Central Administrative Tribunal to the extent of 50% by their orders Dt.04/10/2002 in OA.No.387/2002 as unjust, unreasonable illegal, unconstitutional consequently directing the respondents : a)to pay full eligible pension from 01/06/1990 along with the arrears and all consequential benefits (b)to pay the arrears of petitioner salary from 17/10/1983 to 31/05/1990 along with all consequential benefits.

Counsel for the Petitioner: MR.A.HANUMANTHA REDDY

Counsel for the Respondents: MR.R.S.Murthy

The Court made the following:

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ORAL COMMON ORDER:- (PER PSN,J.)

Union of India – Railways had questioned the order made in O.A.No.387 of 2002, dated 04.10.2002, of the Central Administrative Tribunal, Hyderabad Bench (hereinafter referred to as "Tribunal" for the purpose of convenience).

2. The 1st respondent in the W.P. No.24404 of 2002 – the applicant in O.A. – Shaik Mahaboob Sahab, had also questioned the said order by filing W.P.No.24979 of 2002. In view of the same, both the Writ Petitions are being disposed of by this common order. For the purpose of convenience, the parties would be referred to as arrayed in the O.A.

3. The Writ petitioner in W.P.No.24979 of 2002 – applicant, while he was working as Dispatch Clerk in the office of Divisional Operating Superintendent, South Central Railway, Vijayawada, a disciplinary action was initiated against him by issuing a charge Memo No.CON.227/1/80/2, dated 16.12.1980. A punishment of reduction in rank to the post of peon for a period of four years was imposed on him on 19.11.1982. On an appeal, the punishment was enhanced to removal from service

on 17.10.1983. Questioning the same, the applicant filed W.P.No.11427 of 1983, which was transferred to the Tribunal and renumbered as S.L.P.No.3234 of 1990 and the same was allowed and the Railways has taken the matter to the Supreme Court and the Hon'ble Supreme Court on 30.11.1990, remanded the matter for reconsideration on merits. Subsequent to that, Tribunal by its orders, dated 01.05.1991, in T.A.No.649 of 1986, set aside the punishment imposed on the applicant, but permitted Railways-respondents to continue the disciplinary enquiry in terms of Railway Servants (Discipline and Appeal) Rules, either treating the applicant as in-service or deemed to be under suspension from the date of order of removal. The Tribunal also observed that depending upon the order passed, the applicant would be entitled to arrears of pay or would be entitled to the allowance from the date of removal from service to the end of enquiry. It is stated that railways by order, dated 12.12.1991, kept the applicant under deemed suspension from 17.10.1983, the date of removal to 31.05.1990, the date of applicant attaining the age of superannuation. It is also ordered to pay provisional pension from 01.06.1990. However, orders to conduct the enquiry by appointing Enquiry Officer has been made on 25.09.1995. It is further stated that the railways had been protracting without conducting the enquiry and the applicant filed O.A.No.1031 of 1998 on the file of the Tribunal for quashing the charge Memo, dated 16.12.2000, and the Tribunal vide order, dated 24.11.1998, partly allowed the said O.A., directing respondents-railways to pay DCRG to the applicant within two weeks from the date of the order and dispose of the enquiry not later than 31.01.1999. Aggrieved by the said order of the Tribunal, the railways filed W.P.No.3506 of 1999 and the applicant also filed W.P.No.5588 of 2000 against the orders of the Tribunal in O.A.No.1031 of 1998, dated 24.11.1998, in not quashing the Charge Memo. By a common order, dated 17.10.2001, in W.P.No.3506, 13500 of 1999 and W.P.No.5588 of 2000, the W.P.No.3506 of 1999 filed by the railway administration was dismissed by observing that even after the factual statement made by the learned standing Counsel for the railways was accepted to be true, it could hardly be a justifiable ground for the railway administration to sleep over the matter and not to pass a final order and directed the respondent-disciplinary authority to pass appropriate final orders in the disciplinary proceedings initiated against the petitioner on or before 31.12.2001 as a last chance. With the said observation, the W.P.No.5588 of 2000 was disposed of.

4. In pursuance of the above directions, the 3rd respondent in W.P.No.24979 of 2002 by order, dated 31.12.2001, ordered that entire monthly pension of the applicant be withheld on permanent basis. Aggrieved by the same, the applicant filed O.A.No.387 of 2002 and the Tribunal, after considering all the facts and circumstances, ultimately made the following order:

> "11. We have gone through the facts of the case and the material on record and have also considered the arguments of the ld. Counsel for the applicant as well as the respondents.
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> 12. We find that the respondents have been rather harsh on the applicant for withholding the entire monthly pension admissible to the applicant, on permanent basis. If such hard earned benefit is allowed to be taken away in the days of the applicant's old age, it would be destructive to the principles of social and economical justice, which the Constitution of India designs to secure to all citizens of India. We take the support from the decision of the Punjab & Haryana High Court in the case of Wasdev Singh v. State of Punjab & Haryana High Court, wherein it was held that having allowed the petitioner to retire, it is not open to the Government to order cut in the pension on the ground of his misconduct unless there is a pecuniary loss to the Government. Similarly, the High Court of Calcutta in the case of Dinesh Chandra Sarkar v. State of West Bengal & Ors. (1989 LAB IC 329) had held that regarding the question of continuation of any disciplinary proceedings, the scope is limited and there cannot be any extension. This Rule categorically postulates that there ought to be some sort of pecuniary loss without which question of continuation of an enquiry does not and cannot arise. In regard to withholding or reduction in pension, the Apex Court in the case of State of Maharashtra v. M.H.Mazumdar (AIR 1988 SC 842) has held that the reduction of pension by 50% was disproportionate to the charges proved against the delinquent. The State Govt. was directed to reconsider the question of reduction of pension.
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> 13. Considering the above facts of the case and also the various judicial decisions cited by the counsel for the applicant, we are of the view that since there was no pecuniary loss to the Government, the entire monthly pension admissible to the applicant should not have been withheld by the respondents, on permanent basis. In our view, withholding of 50% of the monthly pension would meet the ends of justice."

5. Ultimately, the Tribunal directed the railways-respondents to review their order, dated 31.12.2001, and restricted withholding of the monthly pension admissible to

the applicant on permanent basis to the extent of 50% only from that date, and effect to this order be given by the railways-respondents within two months from the date of communication of the order and the applicant be paid 50% of the pension from January, 2002 onwards. Aggrieved by the same as aforesaid, both the railways-respondents in the O.A. and the applicant had preferred the Writ Petitions referred to supra.

6. Sri R.S.Murthy, learned counsel representing the railways, had taken this Court through the findings recorded by the Tribunal and contended that the Tribunal wholly erred in directing the respondents to pay 50% of the pension to the applicant. The learned counsel also contended that the charge relating to receipt of amount by way of corruption is a grave one. The learned counsel also had drawn the attention of this Court to the orders made in this regard and would submit that the order made by the Tribunal cannot be justified and the same is liable to be quashed.

7. Sri A.Hanumantha Reddy, learned counsel representing the applicant- 1st respondent in W.P.No.24404 of 2002 and Writ Petitioner in W.P.No.24979 of 2002 would submit that even this order cannot be sustained for the reason that the applicant had retired from service. Apart from this aspect of the matter, retaining 50% of the pension definitely is not justifiable. The counsel placed strong reliance on the decision of the Apex Court reported in ***STATE OF U.P. AND OTHERS v. JAWHAR LAL BHATIA***.

8. Heard both the counsel.

9. On a perusal of the findings recorded by the Tribunal and other material available on record, the Tribunal had considered all the aspects and recorded convincing reasons at Para Nos.11 to 13 as specified above and ultimately came to the conclusion that withholding the monthly pension admissible to the applicant on permanent basis to the extent of 50% only from 31.12.2001 would be just and reasonable and with certain other directions ultimately the O.A. had been disposed

of.

10. It is no doubt true that on facts in the judgment referred to supra, the Apex Court came to the conclusion that withholding the pension to an extent of 75% would not be just, but the same was restricted to 25%. On a careful scrutiny of the facts of the said case, the same is distinguishable from the case on hand, since this is a matter where a charge of corruption had been made.

11. Be that as it may, in the light of the convincing reasons recorded by the Tribunal, and the contentions advanced by both the parties, we are of the considered opinion that the findings recorded by the Tribunal to be confirmed and accordingly hereby confirmed.

12. Accordingly, both the Writ Petitions are bound to fail and shall stand dismissed. No order as to costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 11.03.2005

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One fair copy to the Honourable Mr. Justice G. Bikshapathy (for his lordships kind perusal)

One fair copy to the Honourable Mr. Justice P.S. Narayana (for his lordships kind perusal)

To

1 The Divisional Railway Manager South Central Railway, Vijayawada.
2 The Deputy Secretary Union Public Service Commission, New Delhi.
3 The Joint Director, Establishment D&A, Railway Board,
New Delhi.

4 8 LR copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6 The Secretary, A.P. Advocates' Association, Library, High Court Buildings, Hyderabad.

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8. The Registrar, Central Administrative Tribunal, Hyderabad.